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Federal Communications Commission
Office of the Secretary
Washington, D.C. 20554

February 16, 2005

Ms. Mary Newcomer Williams
Mr. Darrin Hurwitz
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 2004-2401

RE: Motion to Accept Petition for Reconsideration
As Timely Filed In ET Docket Nos. 03-104 and 04-37

Dear Ms. Williams & Mr. Hurwitz:

The Office of the Secretary has received your request for acceptance of the Petition for Reconsideration filed by The Association for Maximum Service Television, Inc. in the above-referenced proceeding as timely filed, due to technical difficulties with the Commission's Electronic Comment Filing System (ECFS).

In accordance with 47 C.F.R. Section 0.231(i), I have reviewed your request and verified your assertions. After considering the relevant arguments, I have determined that the Petition for Reconsideration will be accepted as timely filed on February 7, 2005.

If we can be of further assistance, please contact the Office of the Secretary.

Sincerely,

Marlene H. Dortch

Marlene H. Dortch
Secretary

CC: Office of Engineering and Technology

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems	)	ET Docket No. 03-104
	)	
Amendment of Part 15 regarding New Requirements and Measurement Guidelines for Access Broadband over Power Lines	)	ET Docket No. 04-37
	)	
TO: The Secretary	)	

MOTION TO TREAT PETITION FOR RECONSIDERATION AS TIMELY FILED

The Association for Maximum Service Television, Inc. (MSTV), pursuant to Sections 0.231(i) and 1.46(b) of the Commission's Rules, respectfully submits this Motion requesting the Commission to treat the attached Petition for Reconsideration, attached as Exhibit C (Petition), as timely filed on the due date of February 7, 2005.[1] The reason the Petition was not submitted electronically to the Commission on February 7, 2005 was because the Commission's electronic comment filing system (ECFS) was unavailable after 8:00 p.m. (four hours before the midnight electronic filing deadline) on February 7, 2005.

[1] The Petition seeks reconsideration of the Report and Order, *Carrier Current Systems, including Broadband over Power Line Systems; Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems*, ET Docket Nos. 03-104, 04-37, 19 FCC Rcd. 21,265 ¶ 7 (Oct. 28, 2004) (*R&O*), which was published in the Federal Register on January 7, 2005. Broadband Power Line Systems, 70 Fed. Reg. 1360 (Fed. Communications Comm'n Jan. 7, 2005) (final rule). Pursuant to Section 1.429(d) of the Rules, petitions for reconsideration of the *R&O* were due on February 7, 2005, 30 days after publication of the summary of the *R&O* in the Federal Register.

The Commission permits petitions of reconsideration in a rulemaking proceeding to be filed electronically through the Commission's ECFS, 47 C.F.R. § 1.49(f), so long as they are received before midnight on the filing date. 47 C.F.R. § 1.4(f). On February 7, at approximately 11:30 p.m. (in advance of the midnight deadline for electronic filing, but too late to file in paper), MSTV's counsel repeatedly attempted to access the ECFS in order to file the Petition. These efforts were unsuccessful, yielding an "Application Error(s)" message stating that "Proceeding 03-104 is not open for submission to ECFS." *See* Exhibit A (representative copy of Application(s) Error message of February 7, 2005).[2] MSTV's counsel then investigated the "System Status" of the ECFS and discovered a "Status Report," dated February 7, 2005 at 5:33 p.m., stating that "ECFS will not be available from 8:00 pm ET, February 7, 2005, through 6:00 am ET, February 8, 2005. Emergency maintenance must be performed on the FCC Network. We apologize for any inconvenience." *See* Exhibit B (representative copy of Status Report message of February 7, 2005). As a result of the Commission's emergency maintenance, MSTV's counsel was not able to file the Reconsideration Petition before the midnight deadline on February 7, 2005. MSTV's counsel was not aware of the ECFS status report before 11:30 p.m. on February 7, 2005.

The Secretary is authorized under Section 0.231 of the Commission's Rules to grant brief extensions of time for filing comments "based on operational problems associated with the Commission's electronic comment filing system." 47 C.F.R. § 0.231(i). Here, MSTV respectfully requests the Secretary to exercise this authority to treat the attached Petition as timely filed on the February 7, 2005 due date because the filing delay here is solely attributable

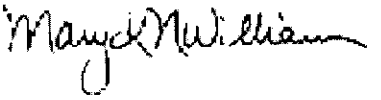
[2] Exhibits A and B were created at the time of the server error by utilizing the "Print Screen" function in Internet Explorer and saving the file to MSTV counsel's computer.

to the lack of availability of the ECFS on the evening of February 7, 2005. As described above, MSTV was unable to file the Petition on the due date because of an emergency operational problem with the ECFS system. MSTV is submitting its Reconsideration Petition in the afternoon of February 8, as soon as feasible given the time necessary to prepare this motion. Moreover, no party will be harmed if the Petition is treated as timely filed.

For the foregoing reasons, MSTV respectfully requests that the Secretary accept the attached Petition and treat it as timely filed on February 7, 2005..

Respectfully submitted,

ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.



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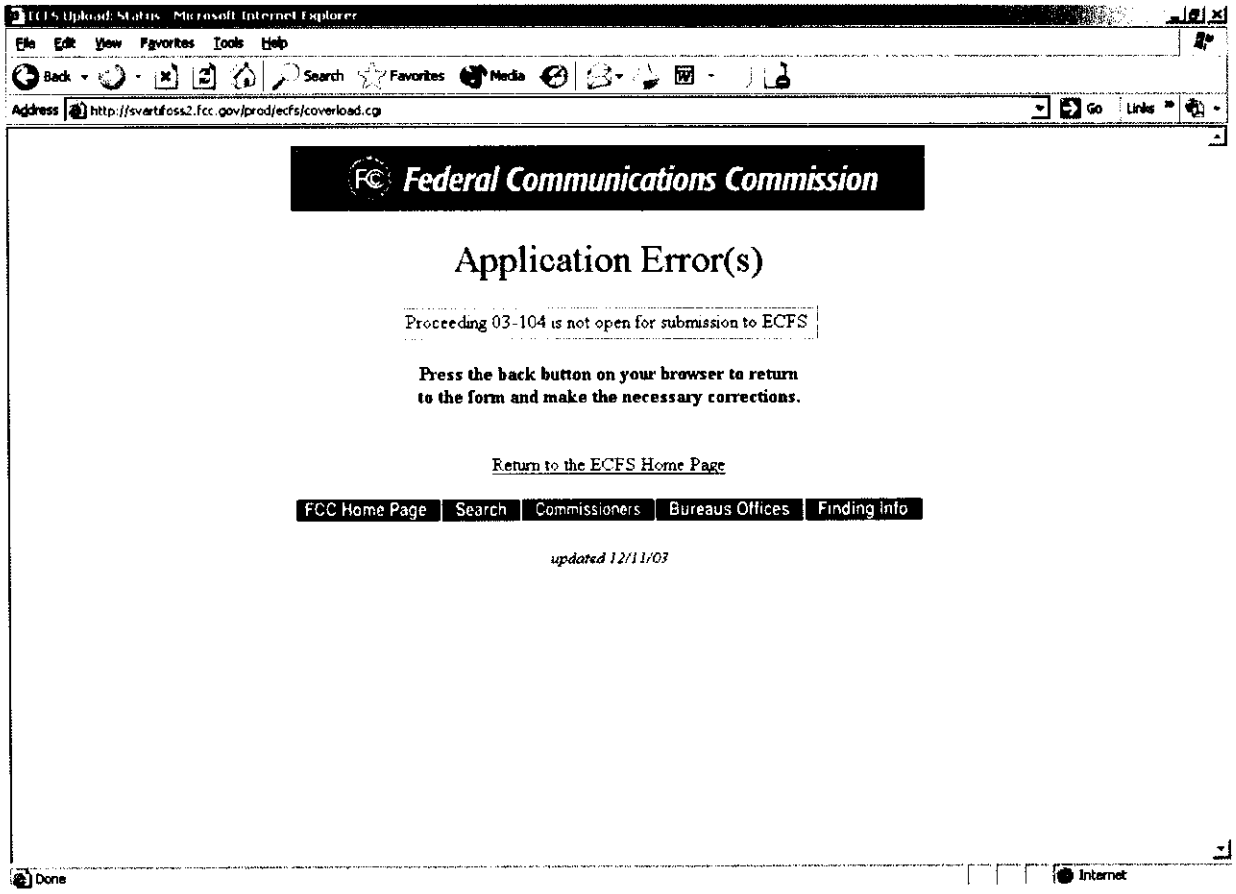
Counsel to MSTV

February 8, 2005

EXHIBIT A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File Edit View Favorites Tools Help
Back Search Favorites Media
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Go Links
Federal Communications Commission
Application Error(s)
Proceeding 03-104 is not open for submission to ECFS
Press the back button on your browser to return to the form and make the necessary corrections.
Return to the ECFS Home Page
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updated 12/11/03
Done
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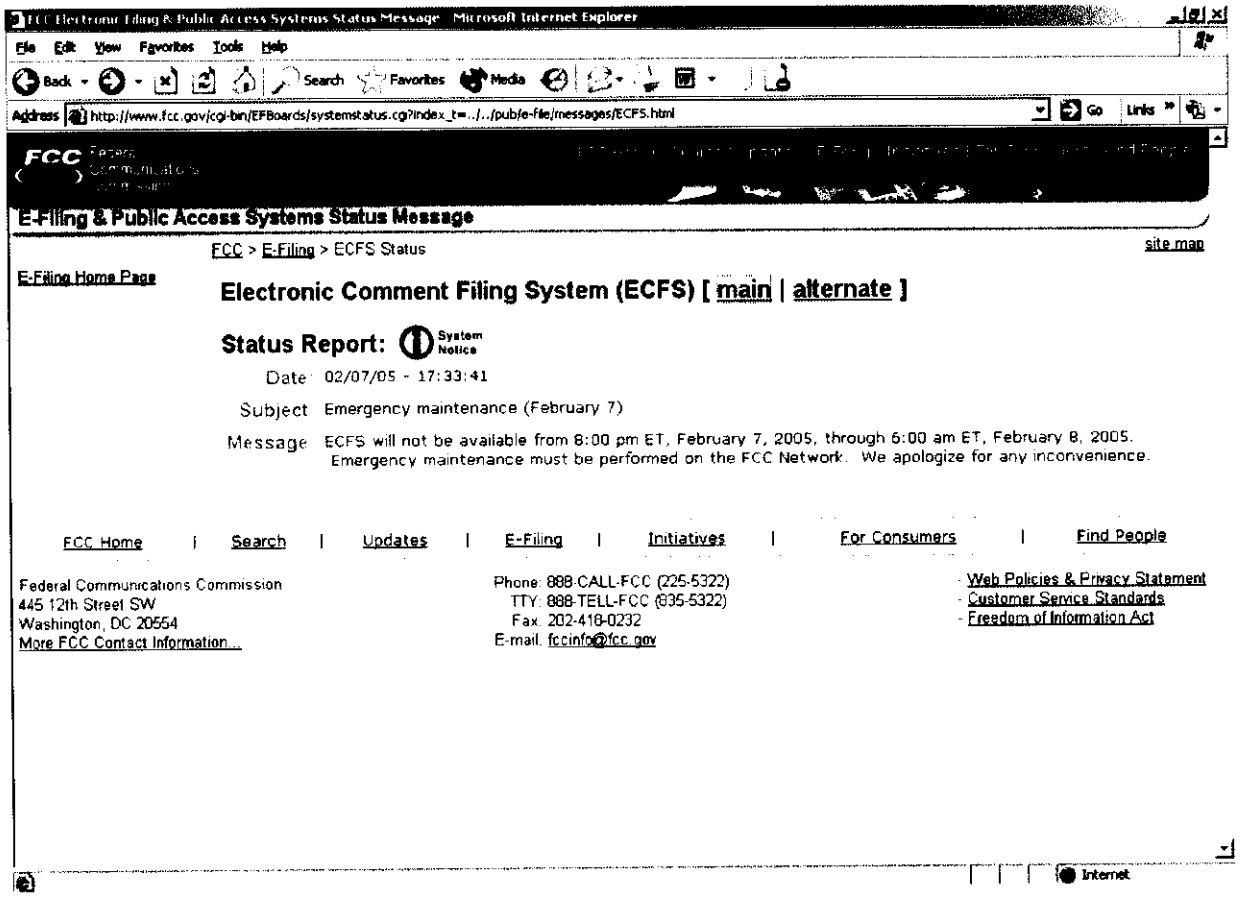
EXHIBIT B


FCC Electronic Filing & Public Access Systems Status Message - Microsoft Internet Explorer
File Edit View Favorites Tools Help
Back Search Favorites Media
Address http://www.fcc.gov/cgi-bin/EFBoards/systemstatus.cgi?index_t=../../pub/e-file/messages/ECFS.html
Go Links
FCC
E-Filing & Public Access Systems Status Message
FCC > E-Filing > ECFS Status
site map
E-Filing Home Page
Electronic Comment Filing System (ECFS) [main | alternate]
Status Report: System Notice
Date 02/07/05 - 17:33:41
Subject Emergency maintenance (February 7)
Message ECFS will not be available from 8:00 pm ET, February 7, 2005, through 6:00 am ET, February 8, 2005. Emergency maintenance must be performed on the FCC Network. We apologize for any inconvenience.
FCC Home | Search | Updates | E-Filing | Initiatives | For Consumers | Find People
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
More FCC Contact Information...
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Customer Service Standards
Freedom of Information Act
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EXHIBIT C

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Regarding Carrier Current Systems,	)	
including Broadband over Power Line	)	ET Docket No. 03-104
Systems	)	
	)	
Amendment of Part 15 regarding New	)	
Requirements and Measurement Guidelines	)	ET Docket No. 04-37
for Access Broadband over Power Lines	)	
	)	

PETITION FOR RECONSIDERATION OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

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February 7, 2005

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Washington, D.C. 20554

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PETITION FOR RECONSIDERATION OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

INTRODUCTION AND SUMMARY

The Association for Maximum Service Television, Inc. (MSTV)[1] respectfully requests the Commission to reconsider the *Report and Order* (*R&O*) in this proceeding that amended Part 15 of the Commission's rules to permit the deployment of Access Broadband over Power Line (Access BPL) technology in the low VHF band (50 to 80 MHz, encompassing television channels 2 through 5). The Commission's decision ignored material evidence that operation of Access BPL services could cause significant interference to licensed radio services and assumed without proof that any problems would be effectively remediable. Recent tests reinforce the evidence already in the record that Access BPL signals pose a significant threat of interference to broadcast operations in the low VHF band.

The threat of interference from Access BPL has the potential to significantly disrupt the DTV transition at a critical juncture, complicating the ongoing DTV channel election

[1] MSTV is a non-profit trade association of local television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

process and potentially delaying the return of analog spectrum. As MSTV urged in its comments in this proceeding, the Commission can avoid this problem simply by confining BPL systems to below 50 MHz until the DTV transition is complete. At that time, if there appears to be a need to expand the spectrum available for Access BPL, the Commission can reevaluate the interference concerns and the feasibility of allowing Access BPL operations in the low VHF band. In the meantime, limiting Access BPL operations to the spectrum currently in use by such systems (2-50 MHz) will both support the deployment of new broadband services *and* promote the continued progress of the DTV transition. This approach best serves the public interest, which demands that both new technologies -- DTV and Access BPL -- be successfully delivered to consumers. Accordingly, MSTV urges the Commission to reconsider at this time the authorization of Access BPL in the low VHF TV band and to confine current Access BPL operations to below 50 MHz.

BACKGROUND

In April 2003, the Commission undertook to examine and encourage the deployment of Access BPL systems to provide a competitive alternative to other high speed Internet access technologies.[2] At around the same time, the Commission granted experimental licenses to evaluate Access BPL equipment operating from 1.7 to 80 MHz.[3] In response to the Commission's Notice of Inquiry (NOI) and Notice of Proposed Rulemaking (NPRM),[4] MSTV

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[2] Notice of Inquiry, *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, ET Docket No. 03-104, 18 FCC Rcd 8498 (Apr. 28, 2003) (*NOI*).

[3] *Id.* ¶ 15.

[4] Notice of Proposed Rulemaking, *Carrier Current Systems, including Broadband over Power Line Systems; Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband over Power Line Systems*, ET Docket Nos. 03-104, 04-37, 19 FCC Rcd 3335 (Feb. 23, 2004) (*NPRM*).

asked that Access BPL not be allowed to operate in the low VHF band (50 to 80 MHz) because of the serious risk of interference to TV broadcast operations.[5]

As the Commission has noted, Access BPL operations raise interference concerns because electric power lines are not shielded and can radiate RF energy. Thus, radio systems using the same frequency bands as Access BPL may receive harmful interference from power line signal leakage.[6] The Commission sought information about the potential for interference to licensed services and asked whether Access BPL should be excluded from certain frequency bands in order to protect licensed users.[7] In response, MSTV noted that studies evaluating the impact of Access BPL systems in the television broadcast bands had not, at the time, been performed in the United States. But relevant studies in other countries, including Japan, the Netherlands, and Great Britain, had shown that the use of Access BPL technology causes RF radiation from power lines that can interfere with licensed services.[8] At the same time, the proponents of Access BPL, including the experimental licensees, failed to offer any measurement data showing that Access BPL technology could be offered without causing interference in the TV band.[9] The only test data provided by an Access BPL system (Ameren)

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[5] Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 03-104 (July 7, 2003) (MSTV/NAB NOI Comments); Joint Reply Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 03-104 (Aug. 20, 2003) (MSTV/NAB NOI Reply Comments); Comments of the Association for Maximum Service Television, Inc., ET Docket Nos. 03-104, 04-37 (May 3, 2004) (MSTV NPRM Comments); Ex Parte Communication of MSTV, ET Docket Nos. 03-104, 04-37 (Oct. 7, 2004) (MSTV *Ex Parte*).

[6] Report and Order, *Carrier Current Systems, including Broadband over Power Line Systems; Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems*, ET Docket Nos. 03-104, 04-37, 19 FCC Rcd. 21,265 ¶ 7 (Oct. 28, 2004) (*R&O*).

[7] *NOI* ¶ 15.

[8] MSTV/NAB NOI Comments at 3-4; *see infra* n.20 & n.22.

[9] MSTV/NAB NOI Comments at 4-5; MSTV/NAB NOI Reply Comments at 2-3.

showed emissions above the Part 15 limits in the 2-20 MHz band,[10] and several proponents of Access BPL systems acknowledged the possibility that Access BPL could cause interference to other services.[11] Because their proposed systems generally operate below 50 MHz,[12] Access BPL proponents submitted virtually no evidence about the type and scope of interference that could be expected from Access BPL technologies operating above 50 MHz.

MSTV raised particular concerns about the potential impact of Access BPL systems on the DTV transition, pointing to studies showing that DTV reception in the low VHF band is severely impaired by impulse noise, which has a similar spectral profile to multi-carrier modulation techniques employed by Access BPL.[13] Based on the international studies, and the lack of sufficient test data upon which the broadcast industry and the Commission could fully and properly evaluate Access BPL's potential to interfere with broadcast operations in the low VHF band, MSTV opposed Access BPL operations at 50-80 MHz until more testing could be conducted, or until the DTV transition was completed.[14]

Despite MSTV's concerns, and the absence of demands from Access BPL proponents for authorization at 50-80 MHz, the Commission adopted the proposed Part 15 amendments and permitted Access BPL operations between 1.705 MHz and 80 MHz, with certain exceptions not relevant here.[15] Although the Commission noted "the significant concerns

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[10] MSTV/NAB NOI Comments at 3-4 (citing *Second Report Pursuant to the Terms of Experimental License*, WC2XXK, File No. 0093-EX-PL-2002, Ameren Energy Communications, Inc., filed June 4, 2003).

[11] MSTV/NAB NOI Reply Comments at 2-3 (citing Ambient Comments at 9, Ameren Comments at 13, and ITI Comments at 3).

[12] *R&O*, at ¶8 & ¶52 n.108.

[13] MSTV/NAB NOI Comments at 6 (citing VSB/COFDM project, *VSB/COFDM Comparison Report*, December 2000; Advisory Committee on Advanced Television, Terrestrial Broadcast Field Tests, October 1995).

[14] MSTV/NAB NOI Comments at 8; MSTV NOI Reply Comments at 3, 5-6; MSTV NPRM Comments at 5; MSTV *Ex Parte*.

[15] *R&O*, ¶¶ 29, 44 n.90.

of licensed radio service users about the potential for Access BPL services to cause harmful interference to their operations," it expressed confidence that these concerns could be adequately addressed and that Access BPL systems would not interfere with radio services.[16] Specifically with regard to the television band, the Commission declined to exclude Access BPL operations because "[w]e do not believe that Access BPL presents a serious threat of interference to broadcast television service on channels 2 to 6."[17] The Commission noted that not all low VHF TV channels are used in each market and that those that are not used could be available for Access BPL operations. Additionally, the Commission stated that television broadcasts will be protected by stricter Part 15 limits for frequencies above 30 MHz and that propagation losses are more significant in that spectrum.[18] However, the Commission offered no evidence that these factors are adequate to protect TV operations from potentially debilitating interference. Nor did the Commission address MSTV's concern that the threat of Access BPL interference to low VHF operations could affect the availability of those channels for DTV operations and thereby undermine the Commission's efforts to "re-pack" TV channels and reclaim analog spectrum higher in the band.[19]

ARGUMENT

The Commission's decision to authorize Access BPL operations in the low VHF band is contrary to the public interest and threatens to derail the DTV transition, another significant Commission initiative to bring new technologies and services to consumers. Evidence already in the record and offered herein shows that the risk of interference from Access

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[16] *Id.* ¶ 23.

[17] *Id.* ¶ 24 n.53.

[18] *Id.*

[19] MSTV/NAB NOI Comments at 7; MSTV NPRM Comments at 3-4; MSTV *Ex Parte*.

BPL to TV is real and substantial, so much so that widespread deployment of Access BPL in low VHF spectrum could render these channels virtually unusable for TV operations. But this kind of collision between new DTV and Access BPL technologies is not inevitable. Both technologies can co-exist, with Access BPL operating at frequencies below 50 MHz and DTV in the television bands above 50 MHz. Because the BPL providers and the Commission freely acknowledge that Access BPL systems generally will operate below 50 MHz in any event, the prudent course at this juncture is to limit Access BPL to the spectrum below 50 MHz to ensure that BPL and DTV technologies will not run head-on into each other just as they are both beginning to take hold with American consumers. Accordingly, MSTV urges the Commission to reconsider the *R&O* and, at least for now, to limit Access BPL operations to spectrum below 50 MHz.

I. THE COMMISSION FAILED TO ADEQUATELY CONSIDER EXISTING EVIDENCE THAT ACCESS BPL COULD INTERFERE WITH TELEVISION BROADCAST SERVICES

In response to the Commission's request for information on the impact that Access BPL systems would have on licensed services, MSTV cited studies conducted in Japan, the Netherlands and Great Britain. For example, Japanese studies showed that BPL systems can significantly increase the noise floor in the bands in which they operate.[20] Based on these studies, the Japanese government did not allow an increase in the frequency bandwidth of BPL systems in that country.[21] Studies conducted in the Netherlands and Great Britain reached

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[20] MSTV/NAB NOI Comments at 3; (citing Fuminori Tsuchiya et al., Interference Measurements in HF and UFH Bands Caused by Extension of Power Line Communication Bandwidth for Astronomical Purpose, presented at the 7th International Symposium on Power-Line Communications and its Applications, Kyoto, Japan (March 26-28, 2003); Cosy Muto et al., *On Radio Interference Assessments of Access PLC System*, Presented at the 7th International Symposium on Power-Line Communications and its Applications, Kyoto, Japan (March 26-28, 2003)).

[21] MSTV/NAB NOI Comments at 3 (citing Announcement of Report by Power Line Communications Study Group, Japanese Ministry of Public Management, Home Affairs, Posts and Telecommunications (August 9, 2002) (available at http://www.soumu.go.jp/joho_tsusin/ eng/Releases/Telecommunications/news020809_3.html)).

similar conclusions.[22] Although these studies evaluated systems operating below 30 MHz, they provided no basis for contemplating a different result at 50-80 MHz. In addition, even BPL proponents -- among them, Ambient, Ameren and the Information Technology Industry Council -- acknowledged in their comments the possibility that BPL could cause interference to other services.[23] Ameren, for example, revealed that its field tests showed emissions above the Part 15 limits, probably caused by the transmission of BPL service.[24]

The Commission did not address the international research on BPL, nor did it adequately address the BPL proponents' own evidence of potential interference. Instead, the Commission relied largely on a study conducted by the National Telecommunications and Information Administration (NTIA) on the interference potential of Access BPL systems to federal government systems.[25] Far from downplaying the risk of interference, the NTIA study identified significant areas of concern, including (1) the inadequacy of methods currently used to measure noise levels and interference potential; (2) likely interference to weak-to-medium strength signals at up to 1500 feet from a BPL noise source at ground level; (3) substantial disagreement as to the strength of radiated emissions from BPL and their potential for causing

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[22] MSTV/NAB NOI Comments at 4 (citing Koos Fockens, *The Radio Amateur and the Effects of the Use of the 230 Volt Power Line for Broadband Data Communication (PLC)*, Report of VERON EMC Committee (March 2002) (Netherlands); *Compatibility of VDSL & PLT with Radio Services in the Range 1.6 MHz to 30 MHz*, Final Report of the Technical Working Group, British Radiocommunications Agency, Department of Trade and Industry (October 2002) (Great Britain)).

[23] *See* MSTV/NAB NOI Reply Comments at 2-3 (citing Ambient Comments at 9, Ameren Comments at 13 and ITI Comments at 3).

[24] *See id.* at 3 (citing Ameren Comments at 13).

[25] *R&O* ¶¶ 11, 23; NTIA Report 04-413, *Potential Interference From Broadband Over Power Line (BPL) Systems to Federal Government Radiocommunications at 1.7-80 MHz, Phase 1 Study, Volume I*, National Telecommunications and Information Administration, filed April 27, 2004 (NTIA Report).

interference to licensed radio services, (4) mixed results from BPL tests and implementations in other countries; and (5) the need for more study in several important areas.[26]

Although the NTIA proposed various measures to reduce the risk of BPL interference to licensed operations,[27] its concerns about interference should have raised red flags at the Commission, particularly when taken together with the international studies and the BPL proponents' own acknowledgement of interference potential. At a minimum, the Commission should have concluded that much more testing is needed to fully evaluate the nature and risk of interference from Access BPL to TV operations in the low VHF bands, as well as the availability of potential remedies for that interference. Allowing Access BPL to deploy in the low VHF band without this information has created a significant threat to the still-fragile DTV transition.

II. NEW EVIDENCE SUGGESTS THAT INTERFERENCE FROM ACCESS BPL COULD RENDER SOME LOW VHF TELEVISION CHANNELS UNUSABLE

Access BPL is such a new technology that research into its impact on licensed radio services is still in its infancy. At the time of the Commission's *R&O*, no study had been completed -- either in the United States or abroad -- specifically on the effects of Access BPL on broadcast television. A new study commissioned by MSTV and issued on February 3, 2005 (*BPL-Television Study*) does examine the issue in detail, and its conclusions are startling: not only will Part 15 compliant Access BPL signals cause "material interference into television channels 2 through 5," but the effect will be to "render[] these channels unusable in many realistic cases."[28]

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[26] NTIA Report at v-vii (Executive Summary), Section 9-2-2 (Summary of Results), Appendix B, NTIA News Release; *see also NTIA Report Finds Significant BPL Interference*, CQ VHF, April 2004 (available at http://www.cq-vhf.com/NTIA%20Report%20May52004.html).

[27] *See* NTIA Report at Section 8 (Interference Prevention and Mitigation Techniques).

[28] M. Winston Caldwell & R. Evans Wetmore, Fox Technology Group, *Interference Effects into Low VHF Television Arising From Broadband Over Power Line*, at 1 (February 2005) (attached as Exhibit 1).

The *BPL-Television Study* analyzed the potential for interference from Access BPL into low VHF television in two different neighborhoods in the Los Angeles area. Two sections of medium voltage residential distribution were selected to model the potential interference.[29] The analysis was performed using the Numerical Electromagnetic Computation (NEC4) program from Lawrence-Livermore Laboratories, which modeled the ingress of Access BPL into television receiving antennas.[30] The injection level assumed for the BPL data signal resulted in fields that were compliant with the applicable Part 15 requirements when measured in a one hertz bandwidth.[31] To simulate television receiving antennas, half-wave dipoles were placed at various locations approximately 18 to 33 feet from the power lines at a height of 30 feet above ground level. The power in the dipoles was then computed using NEC4.[32] The result showed the potential for significant interference: "[BPL] signals on low-VHF frequencies have the very real capability of making television reception impossible."[33]

The *BPL-Television Study* also undermines the Commission's suggestion that broadcasters' interference concerns could be mitigated by the stricter Part 15 limits and weaker propagation characteristics for Access BPL services operating above 30 MHz. The *BPL-Television Study* examined BPL signals that were compliant with the Part 15 requirements and still found significant interference to broadcast operations.[34]

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[29] *Id.* at 6.

[30] *Id.* at 26.

[31] *Id.* at 27.

[32] *Id.* at 26.

[33] *Id.* at 39.

[34] *Id.* at 27, App. A.

This evidence, together with the interference evidence already in the record, makes untenable the Commission's conclusion that "Access BPL [does not] present[] a serious threat of interference to broadcast television service on channels 2 to 6."[35]

III. THE COMMISSION'S DECISION TO PERMIT ACCESS BPL IN THE LOW VHF BAND THREATENS TO DERAIL OR DELAY THE DTV TRANSITION

The interference potential of Access BPL in the low VHF band poses a significant threat to the progress of the DTV transition. Digital television is on the verge of reaching a "critical mass," and consumer investment in DTV receivers is expected to increase dramatically in the coming years. However, that momentum could be halted if the introduction of Access BPL services causes interference to DTV reception.[36] Substantial evidence now available to the Commission shows that Access BPL services are likely to cause significant interference to -- indeed loss of -- DTV reception. As consumers become aware of these interference problems, their willingness to embrace the new TV technology may abate.

In addition, authorizing Access BPL operations in low VHF spectrum at this point is likely to complicate and potentially delay the already highly complex DTV channel selection and spectrum re-packing process.[37] If broadcasters believe that low-VHF channels are "out of the running" for post-transition DTV operations, they may decide to re-examine their channel selection strategies and the re-packing process could be delayed. This would significantly undermine the Congressional and Commission policy to recover analog television spectrum as

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[35] *R&O* ¶ 24 n.53.

[36] MSTV/NAB NOI Comments at 6-8 (citing John Haring and Jeffrey Rohlfs, Strategic Policy Research, *Permitting Unlicensed Devices on Broadcast Spectrum During the DTV Transition: Substantial Costs and Risks, Largely Speculative Benefits*, at 14-15 (April 2003)); MSTV NPRM Comments at 2-4; MSTV *Ex Parte*.

[37] MSTV/NAB NOI Comments at 7-8; MSTV NPRM Comments at 3-4.

quickly as possible for reassignment to new uses.[38] Accordingly, the Commission should protect low VHF channels from Access BPL interference until after the DTV transition is over and all parties have a better understanding of how the low VHF channels are being used for DTV operations and have an opportunity to evaluate the real-world interference potential from Access BPL to low VHF DTV.

IV. LIMITING ACCESS BPL OPERATIONS TO THEIR EXISTING OPERATIONS UNDER 50 MHZ WOULD NOT IMPEDE THE DEPLOYMENT OF THESE SERVICES

MSTV's proposal to limit Access BPL operations to frequencies below 50 MHz will facilitate the DTV transition while at the same time have no meaningful impact on the deployment of Access BPL services to consumers. The *R&O* notes that "[m]ost Access BPL systems that are currently deployed operate in the range from 2 MHz to 50 MHz"[39] and that "equipment available to date operates on frequencies below 50 MHz."[40] None of the BPL proponents advocate operating above 50 MHz. One BPL provider pointed out that "while experimental authorization has been granted to some parties to operate from 1.7 to 80 MHz, as a practical matter BPL operations have been confined to below 50 MHz."[41] Two providers even stated that Access BPL did not need to use frequencies above 30 MHz.[42] Simply stated, the record does not reflect a demonstrated need for BPL operations above 50 MHz. Thus, the Commission is in the fortunate position of being able to support both technologies -- Access BPL and DTV -- without permitting the former to interfere with the latter. Access BPL can be

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[38] *Id.*

[39] *R&O* ¶ 8.

[40] *Id.* ¶ 51 n.108.

[41] *See* MSTV/NAB NOI Reply Comments at 5 (citing UPLC Comments at n.14).

[42] *See id.* (citing Enikia, LLC Comments at 1, xG Technology, LLC Comments at 4).

confined to the spectrum below 50 MHz and the DTV transition can proceed above 50 MHz. If BPL operations later demonstrate a need to operate above 50 MHz, the Commission can always reevaluate the options once the DTV transition has come to a close. But for now, there is no reason for the Commission to threaten the DTV transition to make Access BPL services available to consumers. Thus, the public interest in the success of both of these technologies requires the Commission to reconsider its decision in the *R&O*.

CONCLUSION

The evidence in this proceeding, supplemented by the *BPL-Television Study* attached hereto, shows that the deployment of Access BPL services in low VHF poses a significant threat of interference to TV operations and could derail the DTV transition at a critical junction. Because BPL proponents have not even advocated operating in spectrum above 50 MHz, at this time there is simply no need for the Commission to take this risk at the expense of the American consumer. Accordingly, MSTV asks the Commission to reconsider the *R&O* and to confine Access BPL operations to below 50 MHz, at least until the DTV transition is over and all affected parties have an opportunity to evaluate whether Access BPL can operate at 50-80 MHz without interference to DTV operations.

Respectfully submitted,

ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

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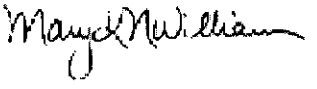

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EXHIBIT 1